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Rohan McGowan-Jackson

General Manager Health, Safety, Environment and Quality



**Kennecott
Utah Copper**

A member of the RIO TINTO Group

M350002
CC: Mary Ann
Daron
~~Confidential~~
revised
05/08

October 8, 2007

Daron R. Haddock
Assessment Officer, Division of Oil Gas & Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City UT 84114-5801

Re: Proposed Assessment for NOV # N2007-58-01

Mr. Haddock:

This letter is in response to the September 10, 2007 letter from the Division of Oil, Gas and Mining ("DOGM") to Kennecott Utah Copper ("KUC"), which KUC received on September 14, 2007, regarding the proposed penalty assessment for the alleged NOV referenced above.

As you know, KUC has already informed DOGM that it plans to contest both the fact of the alleged violation and the amount of the penalty if the parties' should fail to resolve this issue in an agreeable manner to all concerned. This position was emphatically communicated to DOGM at the informal settlement conference held on August 31, 2007. This position was also communicated in the September 7, 2007 tolling agreement between DOGM (Steve Alder) and KUC (Mike Malmquist).

To the extent that your September penalty assessment letter requires that KUC once again provide notice of its plans to contest both the fact of the violation and the amount of the proposed penalty, by way of an Informal Conference, then please consider this letter as such notice. KUC sincerely hopes to find a mutually agreeable path forward to work collaboratively with DOGM to advance the substantive issues raised in the NOV outside of the violation process. To this end KUC also requests that any proceedings regarding the Informal Conference be stayed during the negotiation period of the parties' ongoing efforts to resolve the NOV.

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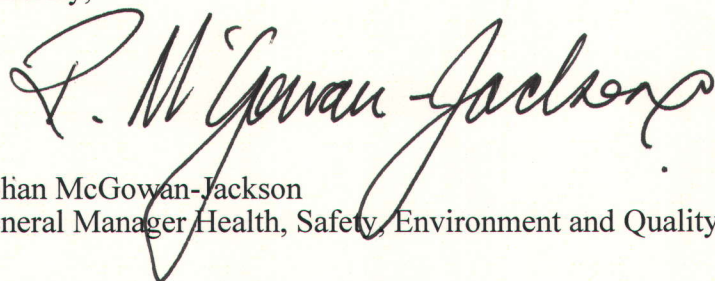
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DIVISION OF OIL, GAS & MINING

Should you have any questions or need further information, please contact me at 569-6356.

Sincerely,

A handwritten signature in black ink, reading "R. McGowan-Jackson". The signature is fluid and cursive, with a large, stylized initial "R".

Rohan McGowan-Jackson
General Manager Health, Safety, Environment and Quality

RMJ/CK: ck

EVENT VIOLATION
INSPECTOR'S STATEMENT
MINERALS REGULATORY PROGRAM

Company/Mine: Kennecott Utah Copper/Bingham Canyon
Permit #: M/035/002

CO # N2007-058-01
Violation # 1 of 1

SERIOUSNESS

1. What type of event is applicable to the regulation cited? Refer to the DOGM reference list of event below and remember that **the event is NOT the same as the violation.** Mark and explain each event. \l

- | | | |
|-------------------------------------|----|--|
| <input type="checkbox"/> | a. | Activity outside the approved permit area. |
| <input checked="" type="checkbox"/> | b. | Injury to the public (public safety). |
| <input checked="" type="checkbox"/> | c. | Damage to property. |
| <input type="checkbox"/> | d. | Conducting activities without appropriate approvals. |
| <input checked="" type="checkbox"/> | e. | Environmental harm. |
| <input checked="" type="checkbox"/> | f. | Water pollution. |
| <input checked="" type="checkbox"/> | g. | Loss of reclamation/revegetation potential. |
| <input type="checkbox"/> | h. | Reduced establishment, diverse and effective vegetative cover. |
| <input type="checkbox"/> | i. | No event occurred as a result of the violation. |
| <input type="checkbox"/> | j. | Other. |

Explanation: As a result of a recorded rainfall of 2.44 inches occurring on July 27, 2007 caused flow of Yosemite dump face material approximately 5000 ft off-site into Butterfield Creek. Control measures are inadequate to manage and intercept the water/sediment flows from the Yosemite dump.

2. Has the event or damage occurred? yes
If yes, describe it. If no, what would cause it to occur and what is the probability of the event(s) occurring? (None, Unlikely, Likely).

Explanation: The damage is the result of sediment flow extending beyond the permit boundary. The event caused off site pollution, environmental harm, loss of reclamation potential. Operator is aware of the risk associated with sediment flowing off site as a result of previous occurrences, the results of a slope risk assessment study performed by the geotechnical firm, Call and Nicholas, Inc. in 2004, and permit statements such as, "The Butterfield Collection area has the greatest potential to release contaminated sediment from the property"

3. Did any damage occur as a result of the violation? yes

If yes, describe the duration and extent of the damage or impact. How much damage may have occurred if the violation had not been discovered by a DOGM inspector? Describe this potential damage and whether or not it would extend off the disturbed and/or permit area.

Explanation: The duration and extent of the damage and impact is unknown. The potential damage has occurred as a result of sediment flowing off site into Butterfield Creek, a perennial stream. Off site damage to water quality may affect the beneficial use of the water. In addition, the hydrologic system may be adversely affected along with aquatic and riparian habitat. As mentioned, but more specifically, there may be stream flow changes, elevated pollutants and/or suspended load. There is potential damage to the Copper Notch repository material, however, this information is subjective because it is currently unknown the material composition and characteristics there. Sediment samples were not taken at the sediment pond. Kennecott did collect sediment samples, however none were taken at the sed pond. The waste dump is undergoing further deterioration and the degradation of surface erosion will continue and impact the control system load beyond its designed capacity.

B. DEGREE OF FAULT (Check the statements which apply to the violation and discuss).

- ☐ Was the violation not the fault of the operator (due to vandalism or an act of God), explain. Remember that the permittee is considered responsible for the actions of all persons working on the mine site.

Explanation: _____

- ☒ Was the violation the result of not knowing about DOGM regulations, indifference to DOGM regulations or the result of lack of reasonable care.

Explanation: There is written documentation in the Groundwater Management Plan that off site erosion events have occurred in the past 11-12 years, and although corrective actions have been taken, they have not been adequate. Kennecott was informed by a consulting firm (CNI) memorandum that the 'south dumps' (which includes Yosemite) are hazardous and are susceptible to flow and slumps. The memo indentified that the consequence would be offsite flow and rated the risk as a level 5 (out of 7, with the highest number being the most serious). This level 5 risk has a 'moderate' consequence according to the CNI memo.

I believe there may be some regulation confusion, in that KUC may believe that other agencies have governing authority over surface and groundwater and DOGM has a secondary role. KUC may have difficulty in DOGM regulation in that the regulations can be subjectively intepreted. (Since there are no regulation 'design standards'), KUC may feel conforming to DOGM regulations as general as they are, may be subject to intepretation that puts them in a vulnerable position.

Event Violation Inspector's Statement

NOV/CO # N2007-58-01

Violation # 1 of 1

- ☒ If the actual or potential environmental harm or harm to the public should have been evident to a careful operator, describe the situation and what, if anything, the operator did to correct it prior to being cited.

Explanation: The operator inspected the series of control systems and started removing sediment from the de silt pond. They responded in a timely manner. Off site action was delayed but they were in contact and discussion with Mr. Rod Dansie, property owner about the effects of the flow on his property. They have offered some concessions to Mr. Dansie, however, he has mentioned will not sign the indemnity agreement that KUC wants him to sign. As a result, KUC has not cleaned up his property. The county road and road margin area has been cleaned up by KUC to my knowledge.

- ☒ Was the operator in violation of a specific permit condition?

Explanation: The permit indicates the land will be kept in a stable condition. The rainfall event caused dump flow which the current system is not designed for. The land, therefore, remains unstable when it is a known risk and hazard that flow will occur, and it isn't controlled, prevented, or minimized.

- ☒ Has DOGM cited the violation in the past? If so, give the dates and the type of warning or enforcement action taken.

Explanation: NO

Was any economic benefit gained by the operator for failure to comply? _____

If yes explain.

Explanation: _____

GOOD FAITH

1. In order to receive good faith for compliance with an NOV or CO, the violation must have been abated before the abatement deadline. If you think this applies, describe how rapid compliance was achieved (give date) and describe the measures the operator took to comply as rapidly as possible.

Explanation: Abatement pending. Operator asked for an extension of three weeks (until Sept 14 2007) and during this time they asked for a conference with DOGM. This conference was to gain information, clarification and understanding about the nature of the violation since they believe it was an act of God. It is clear it was triggered by a rainfall event, but the effects of the events were a known hazard, of which was not managed. The conference was held on August 31 at DNR offices. During this three week extension period, the first actions associated

with the violation have not been completed to my knowledge. The conference ended with the possibility of waiving the NOV if there was a signed agreement regarding dump stability and reclamation and other related factors. They indicated in the conference that they may go to the board to appeal the violation.

2. Explain whether or not the operator had the necessary resources on site to achieve compliance.

Explanation: yes, the resources are available and on-site to achieve compliance.

3. Was the submission of plans prior to physical activity required by this NOV / CO? yes If yes, explain.

Explanation: Plans include slope stability plans for the waste dumps and erosion control plans.

BETH ERICKSEN
Authorized Representative


Signature

9.10.07
Date

MO350002
incoming
(2007)

THIS DOCUMENT
IS
"CONFIDENTIAL"

INCOMING DATE- 10/08/07

OUTGOING DATE- _____

FROM: KVC

TO: Daron Haddock

SUBJECT: Proposed Assessment for
NOV # N2007-58-01

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